IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

THURSDAY, THE 9TH AUGUST 2007 / 18TH SRAVANA 1929

OP.No. 10073 of 1999(Y)

PETITIONER:

ERNAKULAM MEDICAL CENTRE (P) LTD.,
REPRESENTED BY ITS MANAGING DIRECTOR,
COCHIN – 28.

BY ADV. SRI.P.RAMAKRISHNAN

RESPONDENTS:
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1. STATE OF KERALA, REPRESENTED BY ITS
CHIEF SECRETARY TO GOVERNMENT,
TRIVANDRUM.

2. THE TAHSILDAR, KANAYANNOOR.

BY SENIOR GOVERNMENT PLEADER SRI.MUHAMMED RAFIQ

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 09/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX (O.P.NO.10073 OF 1999)

PETITIONER'S EXHIBITS:

EXT.P1	NOTICE ISSUED TO THE PETITIONER DIRECTING TO FILE RETURNS.
EXT.P1(a)	DECLARATION SUBMITTED BY THE PETITIONER.
EXT.P2	ASSESSMENT ORDER PASSED BY THE SECOND RESPONDENT DATED 27.9..1996.
EXT.P3	LETTER ISSUED BY THE SECOND RESPONDENT EVIDENCING PAYMENT DATED 23.1.1998.
EXT.P3(a)	COPY OF THE RECEIPT SHOWING THE DATES OF PAYMENT ISSUED ALONG WITH EXHIBIT.P3.
EXT.P4	DEMAND NOTICE DATED 3.3.1999 ISSUED TO THE PETITIONER.

RESPONDENTS' EXHIBITS: NIL

//TRUE COPY//

AHZ/

H.L.DATTU, C.J. & K.T.SANKARAN,J.

O.P. NO. 10073 OF 1999 Y

Dated this the 9th August, 2007

JUDGMENT

SANKARAN, J.

The petitioner, a company registered under the Companies Act, constructed a building in Sy.No.87/7A and 8A of Edappally South Village. The building was occupied on 1.2.1995. Assessment under the Kerala Building Tax Act was made as per Ext.P2 assessment order dated 27.9.1996. Petitioner paid the building tax as assessed under Ext.P2, evidenced by Exts.P3 and P3(a).

2. Later, as per Ext.P4 order, dated 3.3.1999, the building tax assessed as per Ext.P2 was revised and the revised building tax of Rs.5.17.500/- was imposed as against the building tax of Rs.3,46,500/- already assessed under Ext.P2. The prayer in the Original Petition is to quash Ext.P4. There is also a prayer to declare Section 5(2) of the Building Tax Act as unconstitutional.

3. Against Ext.P4 assessment order, the petitioner has an alternative remedy of appeal under Section 11 of the Act. Without resorting to the appellate remedy, the petitioner cannot straight away challenge the same in a writ petition. The petitioner is granted thirty days' time from today to file an appeal before the Appellate Authority challenging Ext.P4 and if such an appeal is filed within the aforesaid period of thirty days, the same shall be disposed of on merits by the

Appellate Authority, taking it as having been filed within time.

4. As regards the prayer to declare Section 5(2) of the Act as unconstitutional, this Court had already held in **Shirly** v. **State of Kerala** (2006 (2) KLT 306) that Section 5(2) of the Building Tax Act as amended by Act 13 of 1993 is unconstitutional. The question of validity or otherwise of Act 13 of 1993 itself was raised in this case. Learned counsel for the petitioner submits that the relief in that respect is not pressed. Accordingly, the Original Petition is disposed of in the following manner:

i) The petitioner is granted liberty to file appeal challenging Ext.P4 order of assessment before the Appellate Authority within a period of thirty days from today.

ii) If such an appeal is filed before the Appellate Authority within the aforesaid period of thirty days, the same shall be disposed of on merits by the Appellate Authority without reference to the period of limitation.

Consequent to the judgment in the Original Petition, all pending interlocutory applications are also rejected.

Ordered accordingly.

(H.L.DATTU)
Chief Justice

(K.T.SANKARAN)
Judge

ahz/

H.L.DATTU, C.J. &
K.T.SANKARAN, J.

O.P.NO. 10073 OF 1999 Y

JUDGMENT

9th August, 2007